

MARK F. HAZELWOOD, # 136521
 DIRK D. LARSEN, #246028
 LOW, BALL & LYNCH
 505 Montgomery Street, 7th Floor
 San Francisco, California 94111-2584
 Telephone: (415) 981-6630
 Facsimile: (415) 982-1634
 Email: mhazelwood@lowball.com
dlarsen@lowball.com

Attorneys for Defendant
 SILICON VALLEY ANIMAL CONTROL AUTHORITY,
 AL DAVIS AND ANTJE MORRIS

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE

LEE JACKSON and KENNETH JACKSON,)	Case No. C07 05667 RS
)	
Plaintiffs,)	DEFENDANTS AL DAVIS AND
)	ANTJE MORRIS'S ANSWER TO
v.)	PLAINTIFFS LEE JACKSON AND
)	KENNETH JACKSON'S FIRST
SILICON VALLEY ANIMAL CONTROL)	AMENDED COMPLAINT
AUTHORITY, CITY OF SANTA CLARA, CITY)	
OF CAMPBELL, HUMANE SOCIETY SILICON)	
VALLEY DOES 1 TO 20,)	
)	
Defendants.)	

Come now defendants AL DAVIS and ANTJE MORRIS ("Defendants") and in answer to the first amended complaint ("FAC") on file herein admit, deny, and allege as follows:

1.

In answer to Paragraph 1 of the FAC, this paragraph simply lists the parties to the action and contains no factual allegations that Defendants can admit or deny.

2.

In answer to Paragraph 2 of the FAC, this paragraph simply lists the number of pages contained in the FAC and contains no factual allegations that Defendants can admit or deny.

3.

In answer to the allegations of Paragraph 3 of the FAC, Defendants admit that plaintiffs Lee

1 Jackson and Kenneth Jackson ("Plaintiffs") are competent adults.

2 4.

3 In answer to the allegations of Paragraph 4 of the FAC, these defendants have no information or
4 belief to enable them to answer whether Plaintiffs are doing business under a fictitious name, and for
5 that reason and basing their denial on that ground, deny that allegation.

6 5.

7 In answer to the allegations of Paragraph 5 of the FAC, Defendants admit that defendants Al
8 Davis and Antje Morris are natural persons, admit that defendant Silicon Valley Animal Control
9 Authority is a public entity, admit that defendant City of Campbell is a public entity in the form of a city,
10 admit that defendant City of Santa Clara is a public entity in the form of a city. These Defendants have
11 no information or belief to enable them to answer whether Humane Society Silicon Valley is a business
12 organization, form unknown, and for that reason and basing their denial on that ground, deny that
13 allegation.

14 6.

15 In answer to the allegations of Paragraph 6 of the FAC, Defendants have no information or belief
16 to enable them to answer the allegations contained therein, and for that reason and basing their denial on
17 that ground, deny both generally and specifically, each and every, all and singular, the allegations
18 contained therein.

19 7.

20 In answer to Paragraph 7 of the FAC, this paragraph does not list any defendants joined under
21 California Code of Civil Procedure section 382, and for that reason, does not contain any factual
22 allegations that Defendants can admit or deny.

23 8.

24 In answer to the allegations of Paragraph 8 of the FAC, Defendants admit that the injuries alleged
25 in the FAC are alleged to have occurred within the jurisdictional area of the Superior Court of the State
26 of California, in and for the County of Santa Clara, and further state that the United States District Court
27 for the Northern District of California has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343
28 because the FAC's eighth cause of action arises under 42 U.S.C. § 1983.

1 9.

2 In answer to the allegations of Paragraph 9 of the FAC, Defendants have no information or belief
3 to enable them to answer the allegations contained therein, and for that reason and basing their denial on
4 that ground, deny both generally and specifically, each and every, all and singular, the allegations
5 contained therein.

6 10.

7 In answer to Paragraph 10 of the FAC, this paragraph simply states that certain causes of action
8 are attached to the FAC and thus contains no factual allegations that Defendants can admit or deny.

9 11.

10 In answer to the allegations of Paragraph 11 of the FAC, Defendants deny both generally and
11 specifically, each and every, all and singular, the allegations contained therein.

12 12.

13 In answer to Paragraph 12 of the FAC, this paragraph contains no statement on the part of
14 Plaintiffs and thus does not contain any factual allegations that Defendants can admit or deny.

15 13.

16 In answer to the allegations of Paragraph 13 of the FAC, Defendants admit that the relief sought
17 in the FAC is within the jurisdiction of the Superior Court of the State of California and of the United
18 States District Court for the Northern District of California.

19 14.

20 In answer to Paragraph 14 of the FAC, this paragraph is a prayer for relief and thus contains no
21 factual allegations that Defendants can admit or deny.

22 15.

23 In answer to Paragraph 15 of the FAC, this paragraph contains no statement on the part of
24 Plaintiffs and thus does not contain any factual allegations that Defendants can admit or deny.

25 16.

26 In answer to the allegations in the paragraph on page 4 of the FAC, Defendants deny both
27 generally and specifically, each and every, all and singular, the allegations contained therein.

28 ///

17.

In answer to the allegations in the paragraph on page 7 of the FAC, Defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

18.

In answer to the allegations in the paragraph on page 8 of the FAC, Defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

19.

In answer to the allegations in the paragraph on page 9 of the FAC, Defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

20.

In answer to the allegations in the paragraph on page 10 of the FAC, Defendants have no information or belief to enable them to answer the allegation that "Plaintiffs were the lawful owners of said pet animals and were entitled to possession of the animals," and for that reason and basing their denial on that ground, deny this allegation. Defendants deny both generally and specifically, all and singular, the remaining allegations contained in this paragraph.

21.

In answer to the allegations in the paragraph on page 11 of the FAC, Defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

22.

In answer to the allegations on page 13 of the FAC, Defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

That plaintiffs assumed the risk of any injuries and/or damages resulting from the matters set forth in said complaint, and that said assumption of risk by plaintiffs was a cause of the injuries and/or damages alleged by plaintiffs, if any there were.

SECOND AFFIRMATIVE DEFENSE

AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS

1 ALLEGE:

2 That plaintiffs were themselves negligent and careless in and about the matters and events set
3 forth in the complaint, and that said negligence contributed to their alleged injuries and/or damages. A
4 verdict of the jury in favor of plaintiffs, if any, which may be rendered in this case must therefore be
5 reduced by the percentage that plaintiffs' negligence contributed to the accident and injuries complained
6 of, if any there were.

7 THIRD AFFIRMATIVE DEFENSE

8 AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

9 That the FAC does not state facts sufficient to constitute a cause of action against these
10 answering defendants.

11 FOURTH AFFIRMATIVE DEFENSE

12 AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
13 ALLEGE:

14 Plaintiffs' causes of action are barred by reason of the provisions of California Code of Civil
15 Procedure sections 335.1, 337, 337.1, 338, 339, 340, and 343.

16 FIFTH AFFIRMATIVE DEFENSE

17 AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

18 Plaintiffs failed to mitigate their damages.

19 SIXTH AFFIRMATIVE DEFENSE

20 AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

21 Plaintiffs were guilty of willful misconduct and wanton and reckless behavior in and about the
22 matters and events set forth in said complaint; and that said willful misconduct and wanton and reckless
23 behavior contributed to the injuries and damages alleged, if any there were.

24 SEVENTH AFFIRMATIVE DEFENSE

25 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
26 ALLEGE:

27 Prior to the time when Defendants were alleged to have committed the acts complained of,
28 Plaintiffs invited, gave permission to, and consented to the acts alleged in the complaint. Each of the

1 acts alleged in the complaint, which acts are expressly denied, was done within the scope of this consent
2 and permission.

3 EIGHTH AFFIRMATIVE DEFENSE

4 AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
5 ALLEGE:

6 Any and all acts or omissions of these defendants, their agents and employees, which allegedly
7 caused the injury at the time and place set forth were the result of an exercise of discretion vested in
8 them. Defendants is thus immune from liability.

9 NINTH AFFIRMATIVE DEFENSE

10 AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:
11 That plaintiffs failed to set forth the facts sufficient to state a cause of action due to a failure to
12 comply with claims requirements of the California Government Code §§ 900 et. seq.

13 TENTH AFFIRMATIVE DEFENSE

14 AS AND FOR AN TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
15 ALLEGE:

16 The acts of these answering defendants were lawful and proper and in all respects were
17 reasonable and legal.

18 ELEVENTH AFFIRMATIVE DEFENSE

19 AS AND FOR A ELEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
20 ALLEGE:

21 These answering defendants acted in good faith and with a reasonable belief that the actions were
22 lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a
23 breach of any duty owed to Plaintiffs.

24 TWELFTH AFFIRMATIVE DEFENSE

25 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
26 ALLEGE:

27 These answering defendants are immune from liability pursuant to the provisions of §§ 815,
28 815.2, 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government Code of the

1 State of California.

2 THIRTEENTH AFFIRMATIVE DEFENSE

3 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
4 ALLEGE:

5 These answering defendants did not violate any of Plaintiffs' clearly established federal rights of
6 which a reasonable person would have known. Defendants are thus entitled to qualified immunity from
7 suit and liability under Plaintiffs' eighth cause of action.

8 FOURTEENTH AFFIRMATIVE DEFENSE

9 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
10 ALLEGE:

11 Any and all acts and omissions of these defendants, which allegedly caused the injuries of which
12 plaintiffs complains, which acts and injuries defendants expressly deny, were performed beyond the
13 scope of an employment, agency or other relationship between these defendants and any other person.

14 FIFTEENTH AFFIRMATIVE DEFENSE

15 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
16 ALLEGE:

17 The allegations of the FAC are barred by the equitable doctrines of laches, waiver, estoppel and
18 unclean hands.

19 SIXTEENTH AFFIRMATIVE DEFENSE

20 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
21 ALLEGE:

22 Each of the other parties was negligent or legally responsible or otherwise at fault for the
23 damages alleged in the Plaintiffs' FAC. These answering defendants, therefore, request that, in the event
24 of a finding of any liability in favor of Plaintiffs, or settlement or judgment against these answering
25 defendants, an apportionment of fault be made among all parties as permitted by *Li v. Yellow Cab*
26 *Company* and *American Motorcycle Association v. Superior Court* by the court or jury. These
27 answering defendants further request a judgment and declaration of partial indemnification and
28 contribution against all other parties or persons in accordance with the apportionment of fault.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEGE:

Plaintiffs' FAC, and each cause of action therein, is barred by the doctrines of collateral estoppel
and res judicata.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEGE:

Plaintiffs lack standing to bring this action.

NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEGE:

Plaintiffs have failed to set out their claims with sufficient particularity to permit these answering
defendants to raise all appropriate defenses. These answering defendants accordingly reserve the right to
add additional defenses as the factual bases for plaintiffs' claims become known.

JURY DEMAND

Defendants hereby demand a jury trial in this action.

WHEREFORE, defendants pray that plaintiffs take nothing by way of the complaint on file
herein and that defendants have judgment for their costs, attorneys' fees and for such other and further
relief as the court deems proper.

Dated: November 14, 2007.

LOW, BALL & LYNCH

By 

MARK F. HAZELWOOD
DIRK D. LARSEN
Attorneys for Defendant
SILICON VALLEY ANIMAL CONTROL
AUTHORITY, AL DAVIS AND ANTJE MORRIS

Jackson v. Silicon Valley Animal Control Authority, et al.
United States District Court - Northern District Case No.: C 07-05667 RS

CERTIFICATE OF SERVICE

I am over the age of eighteen (18) years and not a party to the within action. I am employed at Low, Ball & Lynch, 505 Montgomery Street, 7th Floor, San Francisco, California 94111.

On the date indicated below, I served the following document(s) enclosed in a sealed envelope on the listed addresses:

DOCUMENT(S): DEFENDANTS AL DAVIS AND ANTJE MORRIS'S ANSWER TO PLAINTIFF'S LEE JACKSON AND KENNETH JACKSON'S FIRST AMENDED COMPLAINT

ADDRESSES: SEE ATTACHED SERVICE LIST

☒ **(BY MAIL)** I placed a true copy, enclosed in a sealed, postage paid envelope, and deposited same for collection and mailing at San Francisco, California, following ordinary business practices, addressed as set forth below.

☐ **(BY PERSONAL SERVICE)** I caused each such envelope to be delivered by hand to the addressees noted above or on the attachment herein by _____ Legal Services.

☐ **(BY FACSIMILE)** I caused the said document to be transmitted by Facsimile transmission to the number indicated after the addresses noted above or on the attachment herein.

☐ **(BY OVERNIGHT COURIER)** I caused each such envelope addressed to the parties to be deposited in a box or other facility regularly maintained by the overnight courier or driver authorized by the overnight courier to receive documents.

I am readily familiar with this law firm's practice for the collection and processing of documents for regular and certified mailing, overnight mail, and facsimile transaction, and said document(s) are deposited with the United States Postal Service or overnight courier depository on the same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on November 14, 2007.


Kathi de Leon

SERVICE LIST

Stuart M. Wilson, Esq.
1671 The Alameda, Suite 300
San Jose, CA 95126
Telephone: 408/293-8400
Facsimile: 408/293-0714
Attys. for Plaintiffs

Michael C. Serverian, Esq.
Rankin Law Firm
96 North Third Street, Suite 500
San Jose, CA 95112-5572
Telephone: 408/293-0463
Facsimile: 408/293-9514
Attys. for City of Santa Clara

Joseph Costella, Esq.
Joseph Costella & Associates
P.O. Box 8090
Walnut Creek, CA 94596
215 Lennon Lane, Suite 200
Walnut Creek, CA 94598
Telephone: 925/945-4491
Facsimile: 925/945-4454
Attys. for Humane Society Silicon Valley

William R. Seligmann, Esq.
William R. Seligmann Law Offices
33 Church Street, Suite A
Santa Cruz, CA 95060
Telephone: 831/423-8383
Facsimile: 831/438-0104
Attys. for City of Campbell